

REMARKS

Claims 7-16 are all the claims pending in the application. Claims 7, 8, 10, 11 and 13 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Mueller (U.S. Patent 4,771,589) in view of Baranowski (U.S. Patent 5,407,057).

On June 13, 2005, an amendment was filed to further define claim 7 by reciting "wherein said first attitude is an attitude to array said encased products abreast, and said second attitude is an attitude to array said encased products tandem." Mueller discloses encased products "C" that are fed along separate feed paths 14 and 16. The containers in both paths 14 and 16 are positioned in the same vertical manner, except that the containers in path 16 are turned upside-down by an inverting apparatus 32.

The Examiner acknowledges that Mueller does not disclose to position any of the containers C or C1 to be tandem (e.g., the top of one container to be facing the bottom of another container) and, therefore, relies on Baranowski. In particular, the Examiner asserts that Baranowski teaches a knockdown mechanism (Fig. 9) for the purpose of moving products 12 from a vertical position to a horizontal position, to thereby provide a tandem configuration.

One would not have been motivated to combine the teachings of Baranowski with Mueller, so that only the second feed path 16 in Mueller includes a knock-down mechanism to move the products from a vertical to horizontal position, while the other feed path does not.

First, to create a *prima facie* case of obviousness, the Examiner must establish, amongst other things, that there is some suggestion or motivation in either the references themselves or in

the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine the references' teachings (MPEP § 2142).

Is respectfully submitted that the Office Action does not point to any specific portion of the cited references to support such a motivation to combine the reference teachings. In fact, the Office Action does not provide any evidentiary support whatsoever for this alleged motivation. Nevertheless, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. (*In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)). The Examiner has not stated why one would have wanted to knock down the containers in only feed path 16 of Mueller. Thus, for this reason alone, Applicants submit that a *prima facia* case of obviousness has not been established.

Second, the references do not teach or suggest that providing tandem containers in the second feed path 16 of Mueller would provide any benefit. This lack of desirability to make the combination further evidences the invention's non-obvious features (MPEP §2143.01). Mueller discloses that the containers are moved along the respective paths 14 and 16 to be packaged by an apparatus 26, so that they are positioned in a uniform manner, as shown in Fig. 1. This uniform manner results in the containers being disposed side-by-side to form two rows, each containing four containers, as illustrated in Fig. 2.

Third, if only the cans in the second feed path 16 of Mueller (as suggested in the Office Action) were to be knocked down and placed in tandem, they would be conveyed to the packaging apparatus 26 in this knocked down configuration and would provide an unorganized and dimensionally unstable package P (e.g., one row in tandem and the other row in non-tandem). Such a configuration is not desirable because if only one of the rows of containers

were arranged in tandem, the dimensional uniformity of the package would be lost. As one skilled in the art of packaging would understand, such an arrangement is not appropriate at least because the package P would not stack properly with other packages and would not provide a benefit. Accordingly, one skilled in the art would not be motivated to modify Mueller in such a manner.

Thus, there is no motivation to combine Mueller and Baranowski, such that the rejection of claims 7, 8, 10, 11 and 13 under 35 U.S.C. § 103(a) should be withdrawn.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



Daniel V. Williams
Registration No. 45,221

SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

WASHINGTON OFFICE
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CUSTOMER NUMBER

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